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F. No. CUS/AG/SO/5/2021

Date: 15.06.2021

STANDING ORDER No: 04/2021

Subject: Standard operating Procedure (SOP) for Nodal officer for monitoring NCLT (National Company Law Tribunal) cases of Import-I and Import-II Commissionerate of Mumbai Customs Zone-I, New Custom House-reg.

1. The Insolvency and Bankruptcy Code (IBC) was enacted with a view to consolidate the fragmented laws pertaining to insolvency. IBC, 2016 handles the insolvency proceedings cases through Tribunals i.e. NCLT and Appellate Tribunal NCLAT. The code recognizes three different types of creditors; Financial Creditors, Operational Creditors and Other Creditors. Each of these has been given different rights and powers. Financial Creditors are those “Whose relationship with the entity is a pure financial contract, such as a loan or a debt security while Operational creditors are those whose liability from the entity comes from a transaction on operations.”
2. Section 5(20) of the Code defines an Operational debt as “ a claim in respect of the provisions of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”. Hence Operational creditors are those whose claims arise “from a transaction on operations”. An Operational creditor has the right to file an application to initiate the insolvency resolution process of a corporate debtor to file a claim in the insolvency resolution process and to participate, without voting rights, in a committee of creditors through their representatives.
3. The entire procedure has been designed to be completed in time bound manner as elaborated below:
 - (i) At the stage of admission of an application for initiating insolvency proceedings, the Code provides 14 days time to the NCLT to make a decision regarding admission or rejection. Apart from the timeline given for admission of cases, the Code also provides a strict timeline for the completion of the entire resolution process.
 - (ii) After admission of application the NCLT shall cause a public announcement of the initiation of corporate insolvency resolution process and call for submission of claims.
 - (iii) Section 12 of the Code states that the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process. The Resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the Committee of Creditors by a vote of sixty six percent of the voting shares. On receipt of an application if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate

insolvency resolution process cannot be completed within 180 days by such further period as it thinks fit, but not exceeding 90 days, provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once. After the expiry of 180 days (or 270 days as the case may be). In the event a resolution plan has not been submitted, or if submitted, and rejected under section 31 of the Code or even after the dismissal of an appeal filed under Section 61 contesting rejection of a plan, the Code directs that the debtor initiate liquidation process. The time period prescribed by the Code is the maximum time provided for the completion.

(iv) Each creditor shall vote in accordance with voting share assigned, if 66% of the creditors approve the resolution plan same needs to be implemented. When the corporate debtor has financial debt, operational creditors do not form part of the Committee of creditors.

(v) On presenting the resolution plan by IRP with approval by atleast 66% of voting by Committee of Creditors, NCLT adjudicate on the insolvency proceedings. If IRP and Committee of Creditors are not able to arrive at plan then adjudicating authority may order for liquidation in which case an official liquidator is appointed to value the assets of the company and divide the same as per the rules and law.

(vi) The commencement of liquidation process takes place on account of failures to submit the resolution plan within the prescribed period or contravention of the resolution plan. Consequently, public statement announcing that the corporate debtor is in liquidation is issued and claims from creditors is sought.


(vii) As per Section 12 A of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority may allow the withdrawal of application admitted under Section 7,9 or 10, with the approval of ninety percent voting share of the committee of creditors. Considering that the proceeding is primarily carried on behalf of and for the benefit of stakeholders of the corporate debtor, the section stipulates two layers of consent. While it is understood that this is the sole requisite is consent of the majority of creditors, the ultimate authority to permit withdraw or not to permit vests with the Adjudicating Authority.

4. It has been observed that the cases pending at NCLT & NCLAT are not being monitored properly and timely action is not initiated in respect of new applications filed with NCLT/NCLAT. Therefore, in the interest of protection of Government Revenue and to make the entire process smooth and effective, a nodal officer for NCLT/NCLAT is being appointed from Appraising General in both the Commissionerates separately to monitor the insolvency proceedings cases under Insolvency and Bankruptcy Code(IBC),2016 through tribunals i.e NCLT and appellate tribunal NCLAT pertaining to Import-I and Import-II Commissionerates.

5. The following functions shall be performed by the Nodal officer:

- He should have entire list of arrears of Revenue as reported in TAR report and list of pending adjudication to identify the cases going to NCLT or NCLAT.
- He should verify list of new parties going for insolvency from the website www.ibbi.gov.in/public announcement website on daily basis without fail.

- Name of parties going to NCLT/NCLAT should be checked from the pending arrear list and pending demand list. If any such name appears in the arrear list/pending demand list, then the concerned group should be immediately alerted for further necessary action.
 - He should regularly verify from the www.ibbi.gov.in/orders/nclt to check if any order are issued by NCLT with respect to resolution, liquidation and withdrawal of application and intimation of the same should be given to concerned Group.
 - A weekly Report of work done in terms of checking the public announcements, filing of claims, if any, liaising with CIRP for providing updates on cases should be submitted to AC(Appraising General).
 - The AC(Appraising General) will put up a fortnightly report on the work done by NCLT Nodal officer to the JC/ADC who shall review the performance and put up a consolidated report to the Commissioner on monthly basis.
6. The following function shall be performed by the respective Group Officers;
- Groups should file timely claims against the corporate debtors, who have gone under insolvency Liquidation under Insolvency and Bankruptcy Code,2016 on the basis of the public announcements published on the ibbi.gov.in websit.
 - Correspondence with Resolution Professional (RP) to be exchanged about the finalization of Resolution/Liquidation Plan. It is to be ensured that Revenue's claim is appropriately reflected with the report of CIRP.
 - All necessary action to represent the department before Resolution Professional/NCLT/NCLAT shall be done by Group to ensure protection and realisation of Government Revenue.
 - Further action should be taken if any orders are issued by NCLT/NCLAT with respect to resolution, liquidation and withdrawal of application.
7. As a one-time exercise, all Groups should identify the cases which gave gone to NCLT for resolution plan or cases where liquidation process has been initiated or finalised. Such list should be submitted to JC/Additional Commissioner within one of issuance of this order for further necessary action.
8. Any difficulties faced or doubts arising in the implementation of this Standing Order may please be brought to the notice to the undersigned.


 15/6/2021
 (MANOJ KUMAR KEDIA)
 COMMISSIONER OF CUSTOMS,
 IMPORT-I & II, NCH, MUMBAI ZONE-I